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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90)
of the Commission's Rules)
to Expand Coordination of the)
800 MHz General Copy Channels)

RM-7965

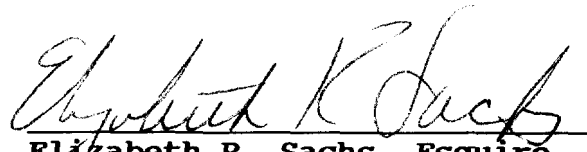
TO: The Commission

COMMENTS
of
AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By:


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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its comments in the above-entitled proceeding.^{1/} The Notice proposes to allow conventional Specialized Mobile Radio ("SMR") Service applicants requesting the assignment of General Category frequencies to secure coordination from any of the three recognized 800 MHz coordinators.^{2/} AMTA supports the Commission's proposal as an improvement in the 800 MHz coordination process. Nevertheless, this step will not, by itself, resolve the problems associated with the use of a cross-notification, rather than cross-coordination system in processing applications for General Category frequencies.

I. INTRODUCTION

AMTA is a nationwide non-profit trade association dedicated to the interests of the SMR industry. The Association's members operate both trunked and conventional 800 MHz SMR systems throughout the country. The former often include General Category frequencies in their complement of channels; the latter utilize General Category frequencies almost exclusively. Thus,

^{1/} Notice of Proposed Rule Making, PR Docket No. 92-209, released October 6, 1992 ("Notice").

^{2/} The three coordinating entities are the Associated Public Safety Communications Officers ("APCO"), the National Association of Business and Educational Radio, Inc. ("NABER"), and the Special Industrial Radio Service Association, Inc. ("SIRSA") (now the Industrial Telecommunications Association, Inc.).

the coordination requirements for 800 MHz General Category frequencies are of significant importance to AMTA and its members.

II. DISCUSSION

In its Notice, the FCC proposes to modify its current policy of requiring applicants for conventional SMR systems using General Category frequencies to obtain coordination from NABER, while allowing SMR applicants proposing to add General Category frequencies to existing trunked systems or to consolidate General Category frequencies into a new trunked system to request coordination from any of the recognized coordinators. Notice 3. The FCC notes that applicants restricted to obtaining coordination through one organization may be at a disadvantage when applicants competing for the use of the same frequencies are permitted to select among the three. Notice 4. Thus, while a trunked applicant seeking to expand or to consolidate using General Category channels may "shop" among the coordinators to select the one with the shortest processing time, a conventional applicant for the same channel must secure coordination from NABER, irrespective of its then current speed of service. The Commission proposes to correct this imbalance by allowing both trunked and conventional applicants to select what each believes to be the optional coordinating organization.

As noted previously, AMTA supports the FCC's proposal as an improvement in a currently inequitable situation. However, the

Association believes that the more significant flaws in the 800 MHz coordination system will not be ameliorated by this change. The combination of the cross-notification, rather than cross-coordination, process among the coordinators of General Category frequencies, and the FCC's policy that date of receipt at the FCC, rather than receipt by the coordinator, governs rights to General Category frequencies are more serious problems, yet they will remain unaffected by the instant proposal.

The inequities described above relate uniquely to the General Category frequency coordination process, not the 800 MHz coordination system generally. The 800 MHz Private Land Mobile spectrum is sub-divided into five discrete Pools of channels with varying coordination requirements. Frequencies assigned to the SMR Pool are "coordinated" directly by the FCC. No prior outside coordination is required and applications are processed on a first-in-time basis. If there are insufficient frequencies to accommodate all applications received, those which cannot be granted are placed on a waiting list for subsequently recovered frequencies.

A different system is used for Business, Industrial/Land Transportation and Public Safety frequencies. Applicants for channels in any of those Pools must file through the designated frequency coordinator, NABER, SIRSA and APCO respectively. Within each organization, applications are processed in order of receipt. An application for which no frequency is available is returned without charge or is assessed a nominal processing fee.

In some instances, an applicant filing thorough one of the coordinating entities may also request the use of a frequency from another Pool in accordance with inter-category sharing rules. 47 C.F.R. § 90.621(g). Such an applicant may elect to have its primary coordinator send the request to the out-of-Pool coordinator. In that case, the request for the frequency would be considered received as of the date of receipt at the out-of-Pool coordinating organization rather than the original date of receipt by the primary coordinator. All applications already received by the out-of-Pool coordinator as of the date of receipt of the inter-category request would be considered as earlier received. Alternatively, the applicant is free to bifurcate its filing, sending each portion to the designated Pool coordinator thereby establishing for each frequency requested the earliest possible receipt date.

While neither the FCC or designated Pool coordination process works flawlessly, both have the virtue of a high degree of certainty. Once the application has been submitted to the appropriate organization, it will be handled strictly in order of receipt.

Applicants for General Category frequencies enjoy no such certainty today, and will not even if the proposal in the Notice is adopted. Trunked applicants today, and conventional applicants upon adoption of the instant proposal, can have no confidence that even coordinated applications will be granted

because they cannot be certain that their application will be the first received by the FCC for that frequency in that area.

Under the current and proposed "competitive" coordination structure, applicants for General Category frequencies may request coordination through any of the recognized organizations. However, since the coordinators have abandoned the cross-coordination process applied to their own Pool channels in favor of an after the fact cross-notification system, coordination means nothing until the application has been received by the FCC. For example, one applicant may submit its application for coordination on December 1st and be notified that the request was coordinated and sent to the FCC on December 20th. Because the coordination was completed, the applicant will be charged the applicable fee. However, another applicant in the same geographic area may have submitted a request to a different coordinator on December 13th. If the individual processing that application happens to be working unusually quickly to leave for vacation or to enhance a performance review, the second request may be coordinated and forwarded to the FCC on December 19th. Because the coordinators no longer coordinate their requests for General Category frequencies as they did for over a decade, but instead simply notify one another of their actions some undetermined time after the action has been taken, each believes it has issued a grantable frequency recommendation.^{3/} Each

^{3/} Any concern that cross-coordination will slow all three organizations down to the longest of their processing times (continued...)

charges the applicable fee. The applicant who filed on December 1st believes it has a valid coordination until its own research reveals the existence of the competing application, until it is informed by its coordinator that it has been notified of the earlier-filed request, or sometimes until its application is rejected by the FCC.

This situation differs from other licensing areas in which the FCC requires that a frequency search be conducted prior to filing an application. Here there is no 30-day window of mutual exclusivity, there is no formal Public Notice of application receipt, and there is no provision for conducting your own search using the FCC's data base.

In fact, since the coordinators themselves do not cross-coordinate, there is no longer a basis for claiming that review by any particular coordinator provides supervisor information to an independent review of the FCC's own data base. Each knows what it has already coordinated, but none know what the other organizations have processed. That information may show up in the FCC's data base before the cross-notification process has been completed. Thus, AMTA recommends that the FCC consider accepting General Category applications on the basis of a certification by the applicant that an appropriate data base search has been performed.

3/(...continued)

can be resolved by FCC establishment of a mandatory response time.

Under the FCC's proposal, securing these often extremely valuable frequencies will require filing with all three coordinators simultaneously. Only by doing so can the applicant insure that only earlier-filed, not earlier-processed, requests might get to the FCC first, thereby securing rights to the frequency. This turns the FCC's belief that it is creating a competitive coordination environment on its head. Instead, all three coordinators will process and be paid for all requests since no applicant can ever be sure which of them will complete its review first. That cannot be the result the FCC intends.

III. CONCLUSION

AMTA supports the FCC's proposal but urges the Commission to expand this proceeding to address the more fundamental problem with coordination of General Category frequencies. If the FCC does not wish to mandate the reinstatement of the cross-coordination process, then AMTA requests that applicants be permitted to request General Category frequencies based on an independent frequency analysis rather than coordination through the recognized organizations.

CERTIFICATE OF SERVICE

I, Lydia Hicks, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify, that I have on this 27th day of November, 1992, placed copies of the foregoing **Comments** in United States mail, postage prepaid, to the following:

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